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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,099	02/01/2002	John B. Roes	0685-095	6030
20350	7590	11/14/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			LEE, DAVID J	
TWO EMBARCADERO CENTER			ART UNIT	
EIGHTH FLOOR			PAPER NUMBER	
SAN FRANCISCO, CA 94111-3834			2613	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/066,099		Applicant(s) ROES ET AL.	
Examiner David Lee		Art Unit 2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-34.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicant argues that Dubois fails to teach the limitation of "selectively reflecting the IR transmit signal by opening and closing the retroreflector obturator according to a response code of the day (RCOD)." Applicant supports this argument by alleging that the responder of Dubois absorbs rather than reflects the interrogation signal and that Examiner is misinterpreting the terms "TCOD" and "RCOD" as defined by the instant specification.

First, it is noted that the features upon which applicant relies (i.e., "both the TCOD and RCOD correspond to information that is contained or otherwise modulated onto the IR signals") are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims do not disclose or even suggest that the codes need to "contained or otherwise modulated onto the IR signals." As stated in the previous action, the codes of Dubois correspond to the wavelengths (see, e.g., col. 5, lines 47-48) and thus read upon the claimed limitation.

Secondly, applicant alleges that the responder of Dubois absorbs rather than reflects the interrogation signal and therefore fails to teach "receiving the reflected IR transmit signal and RCOD at the combat interrogatory unit." However, it is clear from the disclosure of Dubois that the opposite is true. Dubois specifically discloses in multiple portions of the specification that the received signal is "a retroreflected energy beam" (see, e.g., col. 5, line 36).

Additionally, applicant argues that Dubois fails to teach the step of "combining the received RCOD with the TCOD to identify the combat response unit as friend or foe." Applicant does, however, concede that Dubois compares the received RCOD with the TCOD to identify the combat response unit as friend or foe. Since the output result of identifying the combat response unit as friend or foe is the same as the claimed limitation, it is the examiner's position that the word "comparing" can be broadly and reasonably interpreted to read upon the word "combining."

Regarding dependent claim 2, applicant argues that a prima facie case of obviousness has not been established. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner has taken the well known technique of periodically and randomly generating codes from a stored database and combined it with the feature of Dubois that produces the TCOD. Examiner provides a motivation that would lead a skilled artisan to combine the two teachings: to prevent communication interceptions and maintain covert operation.

Regarding dependent claim 3, applicant requests that examiner provide support for the limitation of deactivating the unit upon doffing of the helmet. For purposes of clarification, "doffing" is understood to mean "to take off or remove" in view of Merriam-Webster's dictionary. Motegi et al. (US Patent No. 4,937,795) teaches that a helmet is deactivated upon "putting on and off of the helmet" (see col. 11, lines 42-45).

Regarding dependent claim 4, applicant argues that the "combat response unit" is not a military weapon. Examiner disagrees. Any equipment used in and for the purposes of combat are broadly and reasonably interpreted to be characterized as military weaponry. As stated in the previous Office action, the motivation provided of using biometrics to increase security measures would have led a skilled artisan to incorporate biometric identification capabilities to activate the combat response unit.

Regarding dependent claim 6, applicant argues that a prima facie case of obviousness has not been established. However, as stated above, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Examiner has taken the well known technique of providing directional signal in military detection applications and combined it with the combat response unit of Dubois. Examiner provides a motivation that would lead a skilled artisan to combine the two teachings: for locating a signal source in order to provide increased safety measures and effective communication.


JASON CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600